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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/578,156

05/23/2000

Lundy Lewis

019287-0317293

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03/13/2009

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ART UNIT

PAPER NUMBER

2445

MAIL DATE

DELIVERY MODE

03/13/2009

PAPER

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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

EX PARTE LUNDY LEWIS

Appeal 2008-4230
Application 09/578,156
Technology Center 2400

Oral Hearing Held: February 12, 2009

Before ALLEN R. MacDONALD, ST. JOHN COURTENAY, III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

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1 The above-entitled matter came on for telephonic hearing on
2 Thursday, February 12, 2009, at The U.S. Patent and Trademark Office, 600
3 Dulany Street, Alexandria, Virginia, before Victor Lindsay, Notary Public.

4
5 JUDGE MacDONALD: Before you begin, just in case you were
6 going to talk about the 112 second issue, you can skip over that.

7 MR. ALI: Okay, great. Thanks very much. I appreciate that. I guess
8 that saves me some time. I guess I'll just jump right into the 102 rejection.

9 JUDGE MacDONALD: Right.

10 MR. ALI: And the main thing that I want to emphasize in terms of --
11 in this rejection is the difference between the data abstraction of events and
12 the data abstraction of alarms.

13 Now, throughout our specification, we describe these in different
14 contexts where, you know, generally events -- I mean, network nodes will
15 fire off events, and then you have monitoring agents that look at those
16 events, and based on, you know, certain sequences or patterns, temporal
17 patterns, relationships, statistical correlations, what have you, certain groups
18 of those events will be mapped to alarms. So, you know, for an example, in
19 the independent claim, you have these monitoring agents that generate
20 alarms as a function of events. So then, subsequently, after that, you take
21 those alarms and we have an alarm correlation agent that looks at those, and
22 based on the information contained in those alarms, mapping that to
23 determine a state of a service.

24 So essentially, that's really where I want to focus the distinction, is
25 what happens after these events are processed into alarms. Because if you

1 look at the reference, you know, they use similar language in terms of
2 events, and I think that an analogy can be drawn to our claimed invention.
3 But what's going on in Feridun is strictly on the alarm correlation side. So
4 once the nodes fire off events, you know, Feridun, basically, is -- right here
5 in the abstract it says, "Each correlation rule is adapted to recognize a given
6 pattern of one or more events." So once these events come in and a certain,
7 quote/unquote, pattern of events is identified, you could say that that pattern
8 of events might be considered similar to what we have as alarms. But the
9 difference being that Feridun doesn't describe what happens to those patterns
10 of events after they have been detected.

11 There is some discussion in there in terms of -- let's see -- well, in the
12 abstract, it says that, you know, "If a given event pattern is recognized, the
13 event correlator may be used to take a given action." That's clarified
14 somewhat, a little bit, in Columns 9 and 10. Specifically, Column 10, I
15 think, is probably the best example, where Feridun says, that paragraph,
16 beginning of line 5, that once a given -- you know, "Once a rule has been
17 satisfied so you have an event correlation, which, you know, could say is
18 similar to an alarm, then some other utility -- takes the given action when the
19 correlator matches that event stream."

20 So, for example, the utility might build a record of some time interval,
21 might perform a local corrective action, might issue an event to some other
22 node in the network, but more importantly, it says that the particular details
23 of the routine are not part of this invention. So there's the distinction there in
24 terms of what our claims recite.

1 JUDGE MacDONALD: Isn't there a slight problem, though, based on
2 the -- in your argument based on the next -- top of the next column, Column
3 11? Particularly, where it incorporates by reference a related application,
4 and that related application, which is part of this specification by the
5 incorporation, is directed to determining that there are faults and then it sets
6 up a process for correcting those faults.

7 MR. ALI: Right. But, I mean, I'm not sure. I haven't looked through
8 that in particular detail. I'm trying to look at this paragraph here.

9 I'm sorry, I haven't looked at through reference in detail, but even if it
10 is true that -- you know, I think that one of the things that's right here in
11 Column 10 is that it says that one of the things that it might do is perform a
12 local corrective action. But, you know, that's not the only thing that our
13 claim says. We're actually, you know, determining a state of a service,
14 which is, you know, a specific type of data abstraction. You know, it's
15 describing a length and the specification terms of the nature of a service and
16 how it has a state that's dependent upon a service parameter and that kind of
17 thing.

18 So the fact is, the claim has specific language in there that the alarm
19 correlation agent, based on these alarms, determines the current state of a
20 service. So whether or not you might implement some corrective action, the
21 fact is that that, in our claim, that corrective action is implemented based on
22 the state of the service. So there's that intermediate step there where you're
23 taking these alarms and correlating that to the state of a service.

24 And I certainly didn't see anything in this reference, and from what
25 you've said in terms of what's in the other reference there, I don't think that

1 that necessarily corresponds to determining the state of the service, either.

2 You know, I think it's important to maintain the fact that this is a one --

3 JUDGE MacDONALD: Well, since you're focusing on that, could we
4 focus on service, then, and exactly what that limitation is?

5 MR. ALI: Sure. Okay, so, I mean, you know, we have here, in the
6 opening part of the claim, you know, service operates on a subset of the
7 plurality of the network components and has a specific state. So, essentially,
8 if you look at -- you can take the definition for the term service, it's right
9 here in the specifications, it's described pretty clearly. Page 20, lines 11
10 through 18 there. It says that, "A service is a function the network provides
11 for the business. An abstraction of the network arises in virtue of instructor
12 operation of the network and it's a function whose performance depends on
13 the performance of network components."

14 So, essentially, you know, that state of service is basically a function
15 that's defined overtop of the network in terms of -- you know, it could be any
16 number of things depending on the specific business process that it supports.
17 It could be guaranteeing a certain amount of response time, guaranteeing a
18 certain amount of band width, component availability, or network
19 availability, or what have you. The point being is that, you know, what our
20 claimed invention is trying to get at is taking events that come out of these
21 network nodes, mapping those to alarms and, based on those alarms,
22 determining a state of this specific type of data abstraction, which is what we
23 call a service.

24 You know, and these are generally -- they're usually defined
25 according to contractual agreements between service providers and, you

1 know, and businesses, where a business might decide that a certain aspect of
2 their network or enterprise needs to operate at a certain service level, also
3 sometimes referred to as, you know, quality of service or QOS. And that's
4 what we're trying to get at, is how to take these -- take the information that's
5 -- raw information that's being fired off from network nodes and map it to
6 this higher-level data abstraction.

7 And, you know, simply determining that some node is failing and that
8 a corrective action is needed, you know, that may or may not have anything
9 to do with the service. You know, I could have 100 nodes, all these different
10 routers, and if one of them fails, that doesn't impact my service at all, I'm not
11 particularly concerned with that. But maybe I have this one core router that
12 if that fails, the whole service is going to go down. So, basically, what it is,
13 is kind of sifting through that information to determine when the state of a
14 service is impacted by these events which are mapped to alarms and
15 processing in that way.

16 So, I mean, in the context of the claim language, I would just like to
17 focus on the alarm correlation agent aspect and, you know, similar features
18 recited in the other claims where that alarm correlation agents determines a
19 current state of the service based on the alarms. I have not seen that in this
20 reference, and based on your -- you know, I apologize for not having looked
21 at that patent that was incorporated by reference, but in terms of your
22 characterization of it there, it doesn't sound like that necessarily involves
23 determining the state of a service, either. And, you know, given that this is a
24 102 rejection, I don't think that's disclosed either expressly or inherently,
25 and, you know, for that reason, this rejection has to fail.

1 And just one other thing is I'd just like to point to some of the
2 Examiner's allegations in the Appeal Brief, which, you know, are factually
3 incorrect and I just want to point those out -- for one, the Examiner alleges,
4 on page 7 of the Examiner's Answer, he says that "Appellant admits that
5 Feridun teaches correlating events by applying a set of correlation rules, and
6 thus, Appellant admits that Feridun's events can be considered as alarms."

7 You know, we made no such admission of this sort. We were trying
8 to draw an analogy between the type of language that's being used in
9 Feridun and our claims in terms of Feridun is analyzing event streams which
10 are similar to the events that we're reciting in our claims and then
11 determining when a certain pattern of events occurs. So, again, the analogy
12 there is that these patterns of events are similar to alarms; not the events
13 themselves, but once -- a certain sequence of events or pattern, that might be
14 considered an alarm in terms of how that abstraction is represented.

15 And so, then what we're trying to focus on is, you know, if you
16 substitute the term correlated events for alarms in our language, what
17 happens after those correlated events/alarms are generated, and there's no,
18 you know, disclosure in Feridun that determines the current state of a service
19 based on those data abstractions.

20 And so, I'll leave it at that, unless you have any more questions.

21 JUDGE MacDONALD: If you're finished, I do have one thing --

22 MR. ALI: Yes.

23 JUDGE MacDONALD: -- that I need to ask you about, which is the
24 rejection that you didn't appeal, the double-patenting rejection.

25 MR. ALI: Right.

1 JUDGE MacDONALD: You have some discussion of it in the brief,
2 your concerns about what the Examiner is saying in that.

3 MR. ALI: Right. Right, right.

4 JUDGE MacDONALD: And I have a concern because you're
5 implying that -- the law you're stating here is correct, that filing a terminal
6 disclaimer doesn't have the kind of effect that is being implied. However,
7 what I think is being overlooked is you filed an appeal and you didn't argue
8 those claims on this rejection, which is a waiver.

9 MR. ALI: Correct. In terms of the appeal, yeah, we're willing to
10 waive arguments in terms of --

11 JUDGE MacDONALD: No, it is a waiver and has a consequence in
12 that this rejection will just be affirmed.

13 MR. ALI: That's fine. I mean, if that's the only rejection that's
14 remaining, we're happy to file a term disclaimer. It's just generally kind of a
15 procedural thing that we try to do to --

16 JUDGE MacDONALD: No, I'm talking about the fact that, later, you
17 don't just have the terminal disclaimer if there is some other issue later on,
18 you have the waiver also in play. So there's more going on in the record
19 now than just the terminal disclaimer, which is what the case law deals with.

20 MR. ALI: Fair enough. I mean, it's kind of too late to file a term
21 disclaimer at this point, so I'll just kind of leave it at that. And if you want to
22 go ahead and affirm that rejection, you know, we'll deal with that in due
23 course. But I appreciate your pointing that out. I'll make a note of it for the
24 next time that we have that rejection.

25 JUDGE MacDONALD: Again, do you have any questions?

1 JUDGE COURTENAY: I have no questions --

2 JUDGE MacDONALD: I think we have a pretty good understanding
3 of the point you want us to look at in the claim.

4 MR. ALI: Okay.

5 (Whereupon, the hearing concluded on February 12, 2009.)